



STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
INVITATION FOR BID

AMENDMENT NO. 002  
IFB NO. B2E05029  
TITLE: Mainframe Console Support  
ISSUE DATE: November 4, 2004

REQ #: NR 300 21505000010  
BUYER: Laurie Borchelt  
PHONE NO.: (573) 751-1702  
E-MAIL: [Laurie.Borchelt@oa.mo.gov](mailto:Laurie.Borchelt@oa.mo.gov)

RETURN BID NO LATER THAN: November 12, 2004 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID AND AMENDMENT(S) TO:

DPMM  
P O BOX 809  
JEFFERSON CITY MO 65102-0809

or

DPMM  
301 WEST HIGH ST, RM 630  
JEFFERSON CITY MO 65101

CONTRACT PERIOD: Date of Award Through One Year

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

DIVISION OF INFORMATION SERVICES  
STATE DATA CENTER  
301 W. HIGH ST., ROOM 160  
JEFFERSON CITY, MO 65101

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all terms and conditions, requirements, and specifications of the original IFB as modified by this and any previously issued IFB amendments. The bidder should, as a matter of clarity and assurance, also sign and return all previously issued IFB amendment(s) and the original IFB document. The bidder agrees that the language of the original IFB as modified by this and any previously issued IFB amendments shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB amendment is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.	
PHONE NO.	FAX NO.	E-MAIL ADDRESS	

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

**AMENDMENT #002 TO IFB B2E05029**

**TITLE: MAINFRAME CONSOLE SUPPORT**

**PROSPECTIVE BIDDERS ARE HEREBY NOTIFIED OF THE FOLLOWING CHANGE:**

1. The following paragraph has been **REVISED**: B.1 3) k. in Exhibit B

**NOTE:** The change made as a result of this amendment has been ***italicized and bolded***.



STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
INVITATION FOR BID

AMENDMENT NO. 001  
IFB NO. B2E05029  
TITLE: Mainframe Console Support  
ISSUE DATE: October 27, 2004

REQ #: NR 300 21505000010  
BUYER: Laurie Borchelt  
PHONE NO.: (573) 751-1702  
E-MAIL: Laurie.Borchelt@oa.mo.gov

RETURN BID NO LATER THAN: November 8, 2004 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID AND AMENDMENT(S) TO:

DPMM  
P O BOX 809  
JEFFERSON CITY MO 65102-0809

or

DPMM  
301 WEST HIGH ST, RM 630  
JEFFERSON CITY MO 65101

CONTRACT PERIOD: Date of Award Through One Year

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

DIVISION OF INFORMATION SERVICES  
STATE DATA CENTER  
301 W. HIGH ST., ROOM 160  
JEFFERSON CITY, MO 65101

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all terms and conditions, requirements, and specifications of the original IFB as modified by this and any previously issued IFB amendments. The bidder should, as a matter of clarity and assurance, also sign and return all previously issued IFB amendment(s) and the original IFB document. The bidder agrees that the language of the original IFB as modified by this and any previously issued IFB amendments shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB amendment is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE	
PRINTED NAME		TITLE	
COMPANY NAME			
MAILING ADDRESS			
CITY, STATE, ZIP			
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.	
PHONE NO.	FAX NO.	E-MAIL ADDRESS	

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

**AMENDMENT #001 TO IFB B2E05029**

**TITLE: MAINFRAME CONSOLE SUPPORT**

**PROSPECTIVE BIDDERS ARE HEREBY NOTIFIED OF THE FOLLOWING CHANGE:**

1. The following paragraph has been **REVISED**: 3.2.3

**NOTE:** The change made as a result of this amendment has been ***italicized and bolded***.



STATE OF MISSOURI  
OFFICE OF ADMINISTRATION  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT (DPMM)  
INVITATION FOR BID

IFB NO. B2E05029  
TITLE: MAINFRAME CONSOLE SUPPORT  
ISSUE DATE: OCTOBER 25, 2004

REQ: NR 300 21505000010  
BUYER: LAURIE BORCHELT  
PHONE NO.: (573) 751-1702  
E-MAIL: [laurie.borchelt@oa.mo.gov](mailto:laurie.borchelt@oa.mo.gov)

RETURN BID NO LATER THAN: NOVEMBER 8, 2004 AT 2:00 PM

MAILING INSTRUCTIONS: Print or type **IFB Number** and **Return Due Date** on the lower left hand corner of the envelope or package. Bids must be in DPMM office (301 W High St, Rm 630) by the return date and time.

RETURN BID TO: DPMM or DPMM  
P O BOX 809 301 WEST HIGH ST, RM 630  
JEFFERSON CITY MO 65102-0809 JEFFERSON CITY MO 65101

CONTRACT PERIOD: DATE OF AWARD THROUGH ONE YEAR

DELIVER SUPPLIES/SERVICES FOB DESTINATION TO THE FOLLOWING ADDRESS:

DIVISION OF INFORMATION SERVICES  
STATE DATA CENTER  
301 W. HIGH ST., ROOM 160  
JEFFERSON CITY, MO 65101

The bidder hereby declares understanding, agreement and certification of compliance to provide the items and/or services, at the prices quoted, in accordance with all requirements and specifications contained herein and the Terms and Conditions Invitation for Bid (Revised 08/28/04). The bidder further agrees that the language of this IFB shall govern in the event of a conflict with his/her bid. The bidder further agrees that upon receipt of an authorized purchase order from the Division of Purchasing and Materials Management or when this IFB is countersigned by an authorized official of the State of Missouri, a binding contract shall exist between the bidder and the State of Missouri.

SIGNATURE REQUIRED

AUTHORIZED SIGNATURE		DATE
PRINTED NAME		TITLE
COMPANY NAME		
MAILING ADDRESS		
CITY, STATE, ZIP		
FEDERAL EMPLOYER ID NO.		SOCIAL SECURITY NO. IF FEDERAL EMPLOYER ID NO. NOT APPLICABLE.
PHONE NO.	FAX NO.	E-MAIL ADDRESS

NOTICE OF AWARD (STATE USE ONLY)

ACCEPTED BY STATE OF MISSOURI AS FOLLOWS:		
CONTRACT NO.	VENDOR NO.	CONTRACT PERIOD
BUYER	DATE	DIRECTOR

## **1. INTRODUCTION**

### **1.1 Purpose:**

- 1.1.1 This document constitutes an invitation for sealed bids from prospective bidders to purchase a replacement product for the existing IBM 3174/3274 communications controllers or system console support in the Office of Administration, Division of Information Services, State Data Center (SDC) in Jefferson City, Missouri in accordance with the requirements and provisions stated herein.

### **1.2 Background:**

- 1.2.1 The State Data Center provides several state agencies with seven (7) days a week, twenty-four (24) hour per day data processing services. The data processing services include batch processing, teleprocessing, and interactive programming. This processing is done on an IBM 2064-1c8 and IBM 2084-306 mainframes in a sysplex environment. The SDC has six (6) LPAR's supporting 1.4 Z/OS, one (1) standalone LPAR running VM and one (1) standalone LPAR running 1.4 Z/OS.

## **2. CONTRACTUAL REQUIREMENTS**

### **2.1 Contract Period:**

- 2.1.1 The original contract period shall be date of award through one year. The contract shall not bind, nor purport to bind, the state for any contractual commitment in excess of the original contract period.

### **2.2 Renewal Options:**

- 2.2.1 The Division of Purchasing and Materials Management shall have the right, at its sole option, to renew the contract for five (5) additional one-year periods, or any portion thereof for ongoing maintenance. In the event the Division of Purchasing and Materials Management exercises such right, all terms and conditions, requirements and specifications of the contract shall remain the same and apply during the renewal period, pursuant to applicable option clauses of this document.

### **2.3 Price:**

- 2.3.1 All prices shall be as indicated on the Pricing Page. The state shall not pay nor be liable for any other additional costs including but not limited to taxes, shipping charges, insurance, interest, penalties, termination payments, attorney fees, liquidated damages, etc.

### **2.4 Payments:**

- 2.4.1 The contractor shall understand and agree the state reserves the right to make contract payments to the contractor through electronic funds transfer (EFT). Therefore, prior to any payments becoming due under the contract, the contractor must return a completed state Vendor ACH/EFT Application which is downloadable from the following website: <http://www.oa.mo.gov/purch/vendorinfo/vendorach.pdf>. Each contractor invoice must contain a unique invoice number. The invoice number will be listed on the state's EFT addendum record to enable the contractor to properly apply state payments to invoices. The contractor must comply with all other invoicing requirements stated in the IFB.

### **2.5 Liabilities:**

- 2.5.1 The contractor shall agree that the State of Missouri shall not be responsible for any liability incurred by the contractor or the contractor's employees arising out of the ownership, selection,

possession, leasing, rental, operation, control, use, maintenance, delivery, return, and/or installation of equipment provided by the contractor, except as otherwise provided in the contract.

- 2.5.2 The contractor shall be responsible for any and all personal injury (including death) or property damage as a result of the contractor's negligence involving any equipment or service provided under the terms and conditions, requirements and specifications of the contract. In addition, the contractor assumes the obligation to save the State of Missouri, including its agencies, employees, and assignees, from every expense, liability, or payment arising out of such negligent act. The contractor also agrees to hold the State of Missouri, including its agencies, employees, and assignees, harmless for any negligent act or omission committed by any subcontractor or other person employed by or under the supervision of the contractor under the terms of the contract.
- 2.5.3 The contractor shall not be responsible for any injury or damage occurring as a result of any negligent act or omission committed by the State of Missouri, including its agencies, employees, and assignees.
- 2.5.4 Under no circumstances shall the contractor be liable for any of the following: (1) third party claims against the state for losses or damages (other than those listed above); (2) loss of, or damage to, the state's records or data; or (3) economic consequential damages (including lost profits or savings) or incidental damages, even if the contractor is informed of their possibility.
- 2.5.5 The contractor shall understand and agree that the State of Missouri cannot save and hold harmless and/or indemnify the contractor or employees against any liability incurred or arising as a result of any activity of the contractor or any activity of the contractor's employees related to the contractor's performance under the contract. Therefore, the contractor must acquire and maintain adequate liability insurance in the form(s) and amount(s) sufficient to protect the State of Missouri, its agencies, its employees, its clients, and the general public against any such loss, damage and/or expense related to his/her performance under the contract.

## **2.6 Assignment:**

- 2.6.1 The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the Division of Purchasing and Materials Management.

## **2.7 Inventions, Patents, and Copyrights:**

- 2.7.1 The contractor shall report to the state promptly and in reasonable written detail, each notice or claim of patent or copyright infringement based on the performance of the contract of which the contractor has knowledge.
- 2.7.2 The state agrees that the contractor has the right to defend or at its option to settle, and the contractor agrees to defend at its own expense or at its option to settle, any claim, suit or proceeding brought against the state on the issue of infringement of any United States patent or copyright by any product, or any part thereof, supplied by the contractor to the state under this agreement. The contractor agrees to pay, subject to the limitations hereinafter set forth in this paragraph, any final judgment entered against the state on such issue in any suit or proceeding defended by the contractor. The state agrees that the contractor at its sole option shall be relieved of the foregoing obligations unless the state notifies the contractor promptly in writing of any such claim, suit, or proceeding, and at the contractor's expense, gives the contractor proper and full information needed to settle and/or to defend any such claim, suit, or proceeding. If the product, or any part thereof, furnished by the contractor to the state becomes, or in the opinion of the contractor may become, the subject of any claim, suit, or proceeding for infringement of any United States patent or copyright, or in the event of any adjudication that such product or part infringes any United States patent or copyright, or if the use, lease, or sale of such product or part is enjoined, the contractor may, at its option and its expense: (1) procure for the state the right under such patent or copyright to use, lease, or sell as appropriate such product or part, or (2) replace such product or part with

other product or part suitable to the state, or (3) suitably modify such product or part, or (4) discontinue the use of such product or part and refund the aggregated payments and transportation costs paid therefore by the state, less a reasonable sum for use and damage. The contractor shall have no liability for any infringement based upon: (1) the combination of such product or part with any other product or part not furnished to the state by the contractor, or (2) the modification of such product or part unless such modification was made by the contractor, or (3) the use of such product or part in manner for which it was not designed.

- 2.7.3 The contractor shall not be liable for any cost, expense, or compromise, incurred or made by the state in conjunction with any issue of infringement without the contractor's prior written authorization. The foregoing defines the entire warranty by the contractor and the exclusive remedy of the state with respect to any alleged patent infringement by such product or part.

## **2.8 Coordination:**

- 2.8.1 The contractor shall fully coordinate all contract activities with those activities of the state agency. As the work of the contractor progresses, advice and information on matters covered by the contract shall be made available by the contractor to the state agency or the Division of Purchasing and Materials Management throughout the effective period of the contract.

## **2.9 Replacement of Damaged Product:**

- 2.9.1 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

## **2.10 Substitutions:**

- 2.10.1 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management.
- 2.10.2 The state reserves the right to allow the contractor to substitute any new product offered by the contractor on all unshipped orders if the quality is equal to or greater than the product under contract and if the prices are equal to or less than the contract prices. The Division of Purchasing and Materials Management shall be the final authority as to acceptability.

## **2.11 Contract:**

- 2.11.1 A binding contract shall consist of: (1) the IFB and amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification(s) of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order".
- 2.11.2 The notice of award does not constitute a directive to proceed. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- 2.11.3 The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein.
- 2.11.4 Any change to the contract, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the Division of Purchasing and Materials Management or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence from the state agency, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification to the contract.

### **3. TECHNICAL SPECIFICATIONS**

#### **3.1 General Requirements:**

- 3.1.1 The solution must meet or exceed the technical specifications contained in this document.
- 3.1.2 The solution must be new and in current mainstream production and immediately available.

#### **3.2 System Requirements:**

- 3.2.1 The solution must support system consoles for IBM zSeries (z900 and z990) as well as S/390 type mainframe operating systems.
- 3.2.2 The solution must support at least sixteen (16) logical partitions (LPAR's).

#### **PARAGRAPH REVISED BY AMENDMENT #001**

- 3.2.3 The solution must support ESCON *or* FICON connectivity.
- 3.2.4 The solution must provide full redundancy.
- 3.2.5 The solution must operate with BMC's Automated Operations Software product.
- 3.2.6 The solution should support EMIF.
- 3.2.7 The solution should be compatible with ESCON directors (9302 Mod 3 or Mod 5) or McData 6064 FICON Directors.
- 3.2.8 The solution should be able to define new LPAR's without affecting existing LPAR's.

### **4. PERFORMANCE REQUIREMENTS**

#### **4.1 Equipment:**

- 4.1.1 The contractor must provide a solution which meets or exceeds the specifications contained in this document.
- 4.1.2 The contractor must provide any additional equipment necessary, at no cost to the state, to meet the minimum requirements and to make the equipment fully operational. The SDC will furnish necessary power to the site where the solution is to be located.
- 4.1.3 The contractor shall not substitute any item(s) that has been awarded to the contractor without the prior written approval of the Division of Purchasing and Materials Management. The state reserves the right to allow the contractor to substitute any new products offered by the contractor on all unshipped and future orders if the system capabilities are equal to or greater than the products under contract and if the prices are equal to or less than the contract prices. The Division of Purchasing and Materials Management shall be the final authority as to acceptability.
- 4.1.4 The contractor shall be responsible for replacing any item received in damaged condition at no cost to the State of Missouri. This includes all shipping costs for returning non-functional items to the contractor for replacement.

#### **4.2 Support:**

- 4.2.1 Delivery: The contractor must deliver the equipment within 20 days after receipt of a properly executed order from the SDC. However, it is highly desirable that the delivery be within 14 days.

- 4.2.2 Installation: The contractor must install all equipment. Installation shall be coordinated with the SDC.
- 4.2.3 Training: The contractor must provide all training required for successful operation of the equipment, including manuals for staff designated for training. Training shall be coordinated with the SDC.
- 4.2.4 Warranty: Warranty shall commence upon installation and acceptance of the equipment.
- 4.2.5 Maintenance: The contractor must provide twenty-four (24) hour per day, seven (7) day per week onsite maintenance services. The contractor's maintenance must include all parts and labor needed to maintain the equipment in proper working order during the contract period.

## **5. BIDDERS INSTRUCTIONS AND REQUIREMENTS**

### **5.1 Preparation and Submission of Bids:**

- 5.1.1 Organization: In order to provide optimal readability of their bid by evaluators, bidders are strongly encouraged to organize their response as follows:

- Signed IFB and IFB Amendment Cover Pages
- Table of Contents
- Transmittal Letter/Executive Summary
- Exhibit A - Cost (Pricing Pages)
- Exhibit B - Technical Capabilities and Installation Plan
- Exhibit C - Other Requested Information
- Exhibit D - Domestic Products Procurement Act (Buy American)

- 5.1.2 Conciseness/Completeness of Bid: It is highly desirable that the bidder respond in a complete, but concise manner. It is the bidder's sole responsibility to submit information in their response as it relates to the requirements of the IFB. The State of Missouri is under no obligation to solicit such information if it is not included in the bidder's response. The bidder's failure to submit such information may cause an adverse impact on the evaluation of their bid. Unnecessary information should be excluded from the bidder's response.

- 5.1.3 Electronic Responses: If the bidder is responding electronically through the On-line Bidding website, in addition to completing the on-line pricing, the bidder should submit completed exhibits, forms, and other information concerning the bid as an attachment to the electronic bid. The On-line Bidding website can be found at: <https://www.moolb.mo.gov>.

- a. The exhibits and forms provided herein can be saved into a word processing document, completed by the bidder, and then sent as an attachment to the electronic submission. Other requested, required, or additional information may also be sent as an attachment. Additional instructions for submitting electronic attachments are on the On-line Bidding website. Be sure to include the bid number, company name, and a contact name on any electronic attachments.
- b. In addition, the bidder may submit the exhibits, forms, Pricing Pages, etc., through mail or courier service. However, any such submission must be received prior to the specified closing date and time.
- c. Bidders submitting electronic and hard copy bid responses which are not identical should explain which response(s) is(are) valid for the state's consideration. In the absence of such explanation, the state reserves the right to evaluate the response which serves its best interest.

- 5.1.4 Mailed/Delivered Responses: If the bidder is responding through the mail, the bidder should include an original document, plus two (2) copies for a total of three (3) documents.
- 5.1.5 Imaging: Each bid received is scanned into the Division of Purchasing and Materials Management imaging system after a contract(s) is executed or after all bids are rejected. In preparing a response, the bidder should be mindful of document preparation efforts for imaging purposes and storage capacity that will be required to image the bid. Glue bound materials should not be used.
- 5.1.6 Compliance with Terms and Conditions: The bidder's response shall not take exception to or conflict with the mandatory requirements of the IFB (denoted by the words "must" and "shall") including the IFB terms and conditions. The State of Missouri shall not award a noncompliant bid.
- a. The bidder is further cautioned that when submitting terms and conditions, including terms and conditions regarding proprietary information, copyright, usage restrictions, license agreements, etc., to make sure they do not contain other terms and conditions which conflict with those of the IFB and its contractual requirements.
  - b. Bidder's terms and conditions, including any pre-printed documents which must be executed in order to provide the goods/services required in the IFB, must be submitted with Exhibit C. The bidder shall be required to do one of the following if terms and conditions are submitted: (1) The bidder must clearly state on the first page of each of their terms and conditions documents the following, "In the event of conflict between any of the ("name of company") terms and conditions and those contained in the IFB B2E05029, the IFB shall govern" or (2) Sign the signature block in Exhibit C, paragraph C.6, entitled "Addendum to Terms and Conditions". Failure to place this statement with the bidder's terms and conditions or not signing paragraph C.6 of Exhibit C and/or taking exception to the State's terms and conditions may render a bidder's response unacceptable and remove it from consideration for award.
- 5.1.7 Business Compliance: The bidder must be in compliance with the laws regarding conducting business in the State of Missouri. The bidder certifies by signing the signature page of this original document and any amendment signature page(s) that he/she and any proposed subcontractors are presently in compliance with such laws. The bidder shall provide documentation of compliance upon request by the Division of Purchasing and Materials Management. The compliance to conduct business in the state shall include but may not be limited to:
- Registration of business name (if applicable)
  - Certificate of authority to transact business/certificate of good standing (if applicable)
  - Taxes (e.g., city/county/state/federal)
  - State and local certifications (e.g., professions/occupations/activities)
  - Licenses and permits (e.g., city/county license, sales permits)
  - Insurance (e.g., worker's compensation/unemployment compensation)

## **5.2 Evaluation/Award:**

- 5.2.1 Evaluative Criteria: After determining that a bid satisfies the mandatory requirements, the evaluator(s) shall use both objective and subjective judgment in conducting a comparative assessment of the bid in accordance with the evaluation criteria stated below:

Cost .....70%  
 Technical Capabilities and Installation Plan .....30%

- 5.2.2 **Cost Evaluation:** The evaluation of cost shall include the original contract period plus renewal periods. The cost evaluation shall include all costs associated with meeting the mandatory requirements of the IFB. The State of Missouri reserves the right to evaluate any optional items, if deemed necessary.
- 5.2.3 **Subjective Evaluation:** The evaluation of the technical capabilities of the proposed solution and the bidder's installation plan shall be subjective based on fact. Information provided by the bidder in response to the exhibits of this IFB, as well as information gained from any other source during the evaluation process, may be used in the subjective evaluation.
- 5.2.4 **Question/Answer Conferences:** After an initial screening process, a question and answer conference may be conducted with the bidder, if deemed necessary. In addition, the bidder may be asked to make an oral presentation of their bid during the conference. Attendance cost at the conference shall be at the bidder's own expense. All arrangements and scheduling shall be coordinated by the Division of Purchasing and Materials Management.
- 5.2.5 **System Demonstration:** The bidder may be required to provide a demonstration of his/her system's capabilities at a site he/she deems appropriate and that is reasonably accessible to the evaluators. The demonstration should be constructed to both clarify and verify the bidder's response. Travel expenses incurred by the evaluation team will be the responsibility of the State of Missouri.

### **5.3 Bidders Response to Evaluative Criteria:**

- 5.3.1 The bidder must respond to Exhibit A by stating firm, fixed prices for all equipment necessary to meet the requirements of the IFB. All prices quoted shall be firm, fixed. Unless stated in Exhibit A or otherwise herein, the state shall assume that absolutely no other costs, charges, or fees will be assessed to the state whatsoever. Therefore, the successful bidder shall be responsible for any additional costs.
- 5.3.2 **Technical Capabilities and Installation Plan:** The bidder should provide information relative to the technical capabilities of the proposed solution and the bidder's installation plan, especially information as it relates to the requirements of this IFB. It is highly desirable that the bidder respond to the information requested in Exhibit B for purposes of evaluating the technical capabilities and installation plan.

### **5.4 Other Requested Information:**

- 5.4.1 The bidder should respond to the information requested in Exhibit C, Other Requested Information.

NOTE: FAILURE TO PROVIDE ADEQUATE INFORMATION TO COMPLETELY ADDRESS THE SPECIFIED EVALUATION CRITERIA WILL AT LEAST RESULT IN MINIMAL SUBJECTIVE CONSIDERATION AND MAY RESULT IN REJECTION OF THE BIDDER'S RESPONSE.

**EXHIBIT A**  
**COST (PRICING PAGE)**

**A.1 REQUIRED PRICING**

The bidder shall complete the following pricing table (or in a form similar to the pricing table) by stating firm, fixed pricing for all proposed equipment, including any applicable installation, training, and maintenance cost necessary to meet the requirements of the IFB.

DESCRIPTION/COMMENTS	UNIT OF MEASURE	UNIT PRICE

**A.2 OTHER COSTS**

The bidder must state below any other applicable costs necessary to satisfy the requirements of the IFB.

DESCRIPTION/COMMENTS	UNIT OF MEASURE	UNIT PRICE

**A.3 OPTIONAL PRICING**

The bidder may provide firm, fixed pricing for optional features, expansion options and/or enhancements for the proposed equipment.

DESCRIPTION/COMMENTS	UNIT OF MEASURE	UNIT PRICE

**A.4 RENEWAL OPTIONS**

The Division of Purchasing and Materials Management shall have the sole option to renew the contract for five (5) additional one-year periods, or any portion thereof, for ongoing maintenance.

The bidder must indicate below the maximum allowable percentage of price increase or **guaranteed** minimum percentage of price decrease applicable to the renewal option periods. The stated percentage(s) shall apply to each itemized component on the applicable pricing page(s). **If a percentage is not quoted (i.e. left blank), the state shall have the right to execute the option at the same price(s) quoted for the original contract period.** Statements such as "a percentage of the then-current price" or "consumer price index" are NOT ACCEPTABLE.

All increases or decreases shall be calculated against the **ORIGINAL** contract price, NOT against the previous year's price. A CUMULATIVE CALCULATION SHALL NOT BE UTILIZED.

The percentages indicated below will be used in the cost evaluation to determine the potential maximum financial liability to the State of Missouri.

**NOTICE: DO NOT COMPLETE BOTH A MAXIMUM INCREASE AND A MINIMUM DECREASE FOR THE SAME RENEWAL PERIOD.**

	<b><u>Maximum Increase</u></b>	<b>OR</b>	<b><u>Minimum Decrease</u></b>
<b>First Renewal Period:</b>	original price +____%	<b>OR</b>	original price -____%
<b>Second Renewal Period:</b>	original price +____%	<b>OR</b>	original price -____%
<b>Third Renewal Period:</b>	original price +____%	<b>OR</b>	original price -____%
<b>Fourth Renewal Period:</b>	original price +____%	<b>OR</b>	original price -____%
<b>Fifth Renewal Period:</b>	original price +____%	<b>OR</b>	original price -____%

**EXHIBIT B**  
**TECHNICAL CAPABILITIES AND INSTALLATION PLAN**

The evaluation of the technical capabilities and installation plan offered shall be subjective based on the specifications and requirements stated herein. Therefore, the bidder should present detailed descriptions of all products and plans proposed. The following information should be provided by the bidder in order to verify the technical capabilities of the proposed products and the bidder's installation plan. The state reserves the right to use this information, including information gained from any other source, in the evaluation process.

**B.1 TECHNICAL CAPABILITIES**

- 1) The bidder should fully describe all proposed equipment including, but not limited to, those requirements as described in the technical specifications of this IFB.
- 2) It is highly desirable that all equipment be completely described in this section, with each item or response correlated in sequence to the appropriate paragraph number in the technical specifications.
- 3) In addition, to the above the bidder should also provide information relating to the following:
  - a. Explain how the mainframe operating system will not be impacted in the event the proposed solution fails. Describe all components that are impacted to ensure immediate failover.
  - b. Describe the method of upgrading the solution when new releases are required.
  - c. Describe what, if any, requirements are needed for the TN 3270 PC that the solution will attach to.
  - d. Describe intentions on staying current when new IBM hardware is released.
  - e. Describe how the solution provide remote access.
  - f. Describe solution of remote access, explain the LAN solution or how solution would be secure.
  - g. If the SDC chooses to implement one (1) PC to a network and one (1) PC as a console, describe how it will be in a secure environment.
  - h. Describe how NIP consoles work with this solution.
  - i. Describe impact of IPL'ing system if one part of the solution is inoperable.
  - j. List the type of security that will be provided for the devices.

**PARAGRAPH REVISED BY AMENDMENT #002**

- k. Indicate whether there are instances/agreements where IBM provides maintenance for any or all of the Mainframe Console solution including hardware or software.*

**B.2 SUPPORT**

- 1) Delivery: The bidder should state delivery after receipt of order: \_\_\_\_\_ days ARO.
- 2) Installation: The bidder should fully describe their proposed installation plan.

- 3) Warranty: The bidder should state the warranty period to cover parts and labor which shall apply to all items listed in Exhibit A. The warranty shall commence upon installation and acceptance by the State of Missouri.

Parts: \_\_\_\_\_

Labor: \_\_\_\_\_

#### **B.4 REFERENCES:**

- 1) The bidder should provide five (5) references where the proposed solution is in operation in a Z/OS environment running multiple LPAR's. The bidder should furnish a contact name, telephone number, e-mail address and a description of the services provided for each reference listed.

#### **B.5 ADDITIONAL INFORMATION**

- 1) The bidder should provide any additional relevant information to assist in the evaluation of the technical capabilities of the equipment and the bidder's proposed installation plan.

**EXHIBIT C**  
**OTHER REQUESTED INFORMATION**

**C.1 CONTACT INFORMATION**

- 1) If different from the information provided on the front page of the IFB, the bidder should provide all necessary contact information including the IFB Coordinator, Contract Coordinator if awarded a contract, etc.

<b>IFB COORDINATOR CONTACT INFORMATION</b> <i>i.e. person to be contacted for questions and other coordination activities regarding the bidder's response</i>	
<b>NAME:</b>	
<b>JOB TITLE:</b>	
<b>PHONE:</b>	
<b>FAX #:</b>	
<b>EMAIL:</b>	

<b>CONTRACT COORDINATOR CONTACT INFORMATION</b> <i>i.e. person to be contacted for questions and other coordination activities regarding an awarded contract</i>	
<b>NAME:</b>	
<b>JOB TITLE:</b>	
<b>PHONE:</b>	
<b>FAX #:</b>	
<b>EMAIL:</b>	

**C.2 EMPLOYEE BIDDING/CONFLICT OF INTEREST**

- 1) Bidders who are employees of the State of Missouri, a member of the General Assembly or a statewide elected official must comply with Sections 105.450 to 105.458 RSMo regarding conflict of interest. If the bidder and/or any of the owners of the bidder's organization are currently an employee of the State of Missouri, a member of the General Assembly or a statewide elected official, please provide the following information.

Name and title of state employee, General Assembly member or statewide elected official: \_\_\_\_\_

Name of state agency where employed: \_\_\_\_\_

Percentage of ownership interest in bidder's organization held by state employee, General Assembly member or statewide elected official: \_\_\_\_\_%

**C.3 AMERICAN'S WITH DISABILITIES ACT - EQUIPMENT MODIFICATION**

- 1) In order to assist the State of Missouri in fulfilling the requirements of the Americans with Disabilities Act (ADA), the bidder is requested to furnish the following information.

The bidder should state whether the proposed equipment can be modified for use by persons with disabilities:

YES \_\_\_\_\_ NO \_\_\_\_\_

If yes, the bidder should describe and provide optional pricing, including installation and maintenance (if appropriate), for any available modifications.

#### **C.4 AMERICAN MADE**

- 1) In accordance with the Domestic Product Procurement Act (hereinafter referred to as the Buy American Act) RSMo 34.350-34.359, the bidder is advised that any goods purchased or leased by any public agency shall be manufactured or produced in the United States.

The requirements of the Buy American Act shall not apply if other exceptions to the Buy American mandate in RSMo 34.353 are met.

If the bidder claims there is only one line of the good manufactured or produced in the United States, RSMo 34.353 (2), or that one of the exceptions of RSMo 34.353 (3) applies, the Executive Head of the Agency bears the burden of certification as required prior to the award of a contract.

In accordance with the Buy American Act, the bidder must provide proof of compliance with RSMo 34.353. Therefore the bidder should complete and return Exhibit D, certification regarding proof of compliance, with the bid. This document must be satisfactorily completed prior to an award of a contract.

#### **C.5 PREFERENCE FOR ORGANIZATIONS FOR THE BLIND AND SHELTERED WORKSHOPS**

- 1) Pursuant to 34.165 RSMo, a five (5) bonus point preference shall be granted to bidders including products and/or services manufactured, produced or assembled by a qualified nonprofit organization for the blind established pursuant to 41 U.S.C. sections 46 to 48c or a sheltered workshop holding a certificate of approval from the Department of Elementary and Secondary Education pursuant to section 178.920 RSMo. Five bonus points will be added to the total evaluation points for bidders qualifying for the preference.

If the bidder is an organization for the blind or sheltered workshop, the bidder should provide evidence of qualifications (i.e., copy of certificate or certificate number).

If the bidder is utilizing an organization for the blind or a sheltered workshop as a subcontractor, the bidder should submit: (1) a letter of intent signed by the organization for the blind or sheltered workshop describing the products/services they will provide and indicating their commitment to aid the contractor's performance under the prospective state contract and (2) evidence that the subcontractor qualifies as an organization for the blind or sheltered workshop.

A list of Missouri sheltered workshops can be found at the following internet address: <http://www.dese.mo.gov/divspeced/shelteredworkshops/swindex.html>. The two known organizations for the blind in the State of Missouri are Lighthouse for the Blind and Alpha Pointe.

#### **C.6 ADDENDUM TO TERMS AND CONDITIONS DOCUMENTS:**

- 1) By signing the signature block below, the bidder hereby declares understanding and agreement with the following: (1) that the language of this IFB shall govern in the event of a conflict with his/her bid, including any pre-printed terms and conditions documents that are submitted as part of his/her response, and (2) that any of the bidder's terms and conditions contained in the submitted response or pre-printed terms and conditions documents that conflict with the IFB's terms and conditions, shall have no force

or effect and are hereby considered invalid. All other terms and provisions of the bidder's response or pre-printed terms and conditions documents that are not in conflict with the IFB shall apply hereto.

***(SIGNATURE REQUIRED)***

AUTHORIZED SIGNATURE	DATE
PRINTED NAME	TITLE
BIDDER'S COMPANY NAME	

**EXHIBIT D****STATE OF MISSOURI -- OFFICE OF ADMINISTRATION  
DOMESTIC PRODUCTS PROCUREMENT ACT (BUY AMERICAN)**

The Missouri Domestic Products Procurement Act (34.350-34.359 RSMo) requires that for all bids with a value of \$25,000 or more, the goods or commodities purchased by any public agency or used or supplied in the construction, alteration, repair, or maintenance of any public works must be **manufactured or produced** in the United States. As defined in 34.350 RSMo, United States means the United States of America, the District of Columbia, and all territories and possessions subject to the jurisdiction of the United States. The law also requires that the bidder must provide proof of compliance. **Note: In general, if an import tariff is applied to an item, it does not qualify for the Buy American preference. In addition, Most Favored Nation status does not allow application of the preference.**

**Section A – All Products Are Manufactured or Produced In U.S.**

If all products bid qualify as domestic products under Missouri law, complete only Section A.

I hereby certify that all products qualify as domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

**If Section A is completed, do not complete Section B.**

**Section B – Only One Product Line or No Products Are Manufactured or Produced In U.S.**

If only one product line or no products are manufactured or produced in the U.S. complete only section B.

I hereby certify that there is only one product line or no product manufactured or produced in the U.S., that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required).

COMPANY NAME

**Section C – Products May Qualify Because of Qualifying Treaty**

If some or all products bid qualify for domestic status because of a trade treaty, etc., then the bidder must identify each product, country and qualifying treaty, etc. below. The bidder must list ALL products which are or may qualify as domestic below. If more space is needed, please copy this form and submit as an attachment.

BID ITEM NUMBER(S)	COUNTRY WHERE MANUFACTURED OR PRODUCED	QUALIFYING TREATY, LAW, AGREEMENT, OR REGULATION

**SECTION C**

I hereby certify that the specific items listed above are domestic, that the information provided is true and correct, and complies with all provisions of Sections 34.350-34.359 RSMo. I understand that any misrepresentation herein constitutes the commission of a class A misdemeanor.

SIGNATURE (If submitting bid electronically, typed signature required)

COMPANY NAME

**NOTE: Any product not listed above in Section C will be considered non-domestic if Section A is not signed. If this form is not completed, signed, and returned, items bid may not receive the domestic preference.**

**STATE OF MISSOURI  
DIVISION OF PURCHASING AND MATERIALS MANAGEMENT**

**TERMS AND CONDITIONS -- INVITATION FOR BID**

**1. TERMINOLOGY/DEFINITIONS**

Whenever the following words and expressions appear in an Invitation for Bid (IFB) document or any amendment thereto, the definition or meaning described below shall apply.

- a. **Agency and/or State Agency** means the statutory unit of state government in the State of Missouri for which the equipment, supplies, and/or services are being purchased by the **Division of Purchasing and Materials Management (DPMM)**. The agency is also responsible for payment.
- b. **Amendment** means a written, official modification to an IFB or to a contract.
- c. **Attachment** applies to all forms which are included with an IFB to incorporate any informational data or requirements related to the performance requirements and/or specifications.
- d. **Bid Opening Date and Time** and similar expressions mean the exact deadline required by the IFB for the receipt of sealed bids.
- e. **Bidder** means the person or organization that responds to an IFB by submitting a bid with prices to provide the equipment, supplies, and/or services as required in the IFB document.
- f. **Buyer** means the procurement staff member of the DPMM. The **Contact Person** as referenced herein is usually the Buyer.
- g. **Contract** means a legal and binding agreement between two or more competent parties, for a consideration for the procurement of equipment, supplies, and/or services.
- h. **Contractor** means a person or organization who is a successful bidder as a result of an IFB and who enters into a contract.
- i. **Exhibit** applies to forms which are included with an IFB for the bidder to complete and submit with the sealed bid prior to the specified opening date and time.
- j. **Invitation for Bid (IFB)** means the solicitation document issued by the DPMM to potential bidders for the purchase of equipment, supplies, and/or services as described in the document. The definition includes these Terms and Conditions as well as all Pricing Pages, Exhibits, Attachments, and Amendments thereto.
- k. **May** means that a certain feature, component, or action is permissible, but not required.
- l. **Must** means that a certain feature, component, or action is a mandatory condition. Failure to provide or comply will result in a bid being considered non-responsive.
- m. **Pricing Page(s)** applies to the form(s) on which the bidder must state the price(s) applicable for the equipment, supplies, and/or services required in the IFB. The pricing pages must be completed and submitted by the bidder with the sealed bid prior to the specified bid opening date and time.
- n. **RSMo (Revised Statutes of Missouri)** refers to the body of laws enacted by the Legislature which govern the operations of all agencies of the State of Missouri. Chapter 34 of the statutes is the primary chapter governing the operations of DPMM.
- o. **Shall** has the same meaning as the word **must**.
- p. **Should** means that a certain feature, component and/or action is desirable but not mandatory.

**2. APPLICABLE LAWS AND REGULATIONS**

- a. The contract shall be construed according to the laws of the State of Missouri. The contractor shall comply with all local, state, and federal laws and regulations related to the performance of the contract to the extent that the same may be applicable.
- b. To the extent that a provision of the contract is contrary to the Constitution or laws of the State of Missouri or of the United States, the provisions shall be void and unenforceable. However, the balance of the contract shall remain in force between the parties unless terminated by consent of both the contractor and the DPMM.
- c. The contractor must be registered and maintain good standing with the Secretary of State of the State of Missouri and other regulatory agencies, as may be required by law or regulations.
- d. The contractor must timely file and pay all Missouri sales, withholding, corporate and any other required Missouri tax returns and taxes, including interest and additions to tax.
- e. The exclusive venue for any legal proceeding relating to or arising out of the IFB or resulting contract shall be in the Circuit Court of Cole County, Missouri.

**3. OPEN COMPETITION/INVITATION FOR BID DOCUMENT**

- a. It shall be the bidder's responsibility to ask questions, request changes or clarification, or otherwise advise the DPMM if any language, specifications or requirements of an IFB appear to be ambiguous, contradictory, and/or arbitrary, or appear to inadvertently restrict or limit the requirements stated in the IFB to a single source. Any and all communication from bidders regarding specifications, requirements, competitive bid process, etc., must be directed to the buyer from the DPMM, unless the IFB specifically refers the bidder to another contact. Such communication should be received at least ten calendar days prior to the official bid opening date.
- b. Every attempt shall be made to ensure that the bidder receives an adequate and prompt response. However, in order to maintain a fair and equitable bid process, all bidders will be advised, via the issuance of an amendment to the IFB, of any relevant or pertinent information related to the procurement. Therefore, bidders are advised that unless specified elsewhere in the IFB, any questions received less than ten calendar days prior to the IFB opening date may not be answered.
- c. Bidders are cautioned that the only official position of the State of Missouri is that which is issued by the DPMM in the IFB or an amendment thereto. No other means of communication, whether oral or written, shall be construed as a formal or official response or statement.
- d. The DPMM monitors all procurement activities to detect any possibility of deliberate restraint of competition, collusion among bidders, price-fixing by bidders, or any other anticompetitive conduct by bidders which appears to violate state and federal antitrust laws. Any suspected violation shall be referred to the Missouri Attorney General's Office for appropriate action.
- e. The IFB is available for viewing and downloading on the state's On-Line Bidding website. Registered vendors are electronically notified or mailed the IFB based on the information maintained in the State of Missouri's vendor database. If any portion of the address is incorrect, the bidder must notify the buyer in writing or update the address themselves on the state's On-Line Bidding website.
- f. The DPMM reserves the right to officially amend or cancel an IFB after issuance.

#### 4. PREPARATION OF BIDS

- a. Bidders **must** examine the entire IFB carefully. Failure to do so shall be at bidder's risk.
- b. Unless otherwise specifically stated in the IFB, all specifications and requirements constitute minimum requirements. All bids must meet or exceed the stated specifications and requirements.
- c. Unless otherwise specifically stated in the IFB, any manufacturer names, trade names, brand names, information and/or catalog numbers listed in a specification and/or requirement are for informational purposes only and are not intended to limit competition. The bidder may offer any brand which meets or exceeds the specification for any item, but must state the manufacturer's name and model number for any such brands in the bid. In addition, the bidder shall explain, in detail, (1) the reasons why the proposed equivalent meets or exceeds the specifications and/or requirements and (2) why the proposed equivalent should not be considered an exception thereto. Bids which do not comply with the requirements and specifications are subject to rejection without clarification.
- d. Bids lacking any indication of intent to bid an alternate brand or to take an exception shall be received and considered in complete compliance with the specifications and requirements as listed in the IFB.
- e. In the event that the bidder is an agency of state government or other such political subdivision which is prohibited by law or court decision from complying with certain provisions of an IFB, such a bidder may submit a bid which contains a list of statutory limitations and identification of those prohibitive clauses which will be modified via a clarification conference between the DPMM and the bidder, if such bidder is selected for contract award. The clarification conference will be conducted in order to agree to language that reflects the intent and compliance of such law and/or court order and the IFB. Any such bidder needs to include in the bid, a complete list of statutory references and citations for each provision of the IFB which is affected by this paragraph.
- f. All equipment and supplies offered in a bid must be new, of current production, and available for marketing by the manufacturer unless the IFB clearly specifies that used, reconditioned, or remanufactured equipment and supplies may be offered.
- g. Prices shall include all packing, handling and shipping charges FOB destination, freight prepaid and allowed unless otherwise specified in the IFB.
- h. Prices bid shall remain valid for 90 days from bid opening unless otherwise indicated. If the bid is accepted, prices shall be firm for the specified contract period.
- i. Any foreign bidder not having an Employer Identification Number assigned by the United States Internal Revenue Service (IRS) must submit a completed IRS Form W-8 prior to or with the submission of their bid in order to be considered for award.

#### 5. SUBMISSION OF BIDS

- a. Bids may be submitted electronically as permitted by the IFB through the State of Missouri's On-Line Bidding website or hard copy delivered to the DPMM office. Delivered bids must be sealed in an envelope or container, and received in the DPMM office located at 301 West High St, Rm 630 in Jefferson City, MO no later than the exact opening time and date specified in the IFB. All bids must (1) be submitted by a duly authorized representative of the bidder's organization, (2) contain all information required by the IFB, and (3) be priced as required. Hard copy bids may be mailed to the DPMM post office box address. However, it shall be the responsibility of the bidder to ensure their bid is in the DPMM office (address listed above) no later than the exact opening time and date specified in the IFB.
- b. The sealed envelope or container containing a bid should be clearly marked on the outside with (1) the official IFB number and (2) the official opening date and time. Different bids should not be placed in the same envelope, although copies of the same bid may be placed in the same envelope.
- c. A bid submitted electronically may be modified on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may be modified by signed, written notice which has been received by the DPMM prior to the official opening date and time specified. A bid may also be modified in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to modify a bid shall not be honored.
- d. A bid submitted electronically may be canceled on-line prior to the official opening date and time. A bid which has been delivered to the DPMM office, may only be withdrawn by a signed, written notice or facsimile which has been received by the DPMM prior to the official opening date and time specified. A bid may also be withdrawn in person by the bidder or its authorized representative, provided proper identification is presented before the official opening date and time. Telephone or telegraphic requests to withdraw a bid shall not be honored.
- e. When submitting a bid electronically, the bidder indicates acceptance of all IFB terms and conditions by clicking on the "Submit" button on the Electronic Bid Response Entry form. Bidders delivering a hard copy bid to DPMM must sign and return the IFB cover page or, if applicable, the cover page of the last amendment thereto in order to constitute acceptance by the bidder of all IFB terms and conditions. Failure to do so may result in rejection of the bid unless the bidder's full compliance with those documents is indicated elsewhere within the bidder's response.

#### 6. BID OPENING

- a. Bid openings are public on the opening date and at the opening time specified on the IFB document. Prices shall be posted on the state's On-Line Bidding website after the official opening date and time. The DPMM will not provide prices or other bid information via the telephone.
- b. Bids which are not received in the DPMM office prior to the official opening date and time shall be considered late, regardless of the degree of lateness, and normally will not be opened. Late bids may only be opened under extraordinary circumstances in accordance with 1 CSR 40-1.050.

#### 7. PREFERENCES

- a. In the evaluation of bids, preferences shall be applied in accordance with Chapter 34 RSMo. Contractors should apply the same preferences in selecting subcontractors.
- b. By virtue of statutory authority, a preference will be given to materials, products, supplies, provisions and all other articles produced, manufactured, made or grown within the State of Missouri and to all firms, corporations or individuals doing business as Missouri firms, corporations or individuals. Such preference shall be given when quality is equal or better and delivered price is the same or less.
- c. In accordance with Executive Order 98-21, contractors are encouraged to utilize certified minority and women-owned businesses in selecting subcontractors.

#### 8. EVALUATION/AWARD

- a. Any clerical error, apparent on its face, may be corrected by the buyer before contract award. Upon discovering an apparent clerical error, the buyer shall contact the bidder and request clarification of the intended bid. The correction shall be incorporated in the notice of award. Examples of apparent clerical errors are: 1) misplacement of a decimal point; and 2) obvious mistake in designation of unit.
- b. Any pricing information submitted by a bidder shall be subject to evaluation if deemed by the DPMM to be in the best interest of the State of Missouri.
- c. The bidder is encouraged to propose price discounts for prompt payment or propose other price discounts that would benefit the State of Missouri. However, unless otherwise specified in the IFB, pricing shall be evaluated at the maximum potential financial liability to the State of Missouri.
- d. Awards shall be made to the bidder whose bid (1) complies with all mandatory specifications and requirements of the IFB and (2) is the lowest and best bid, considering price, responsibility of the bidder, and all other evaluation criteria specified in the IFB and (3) complies with Sections 34.010 and 34.070 RSMo and Executive Order 04-09.
- e. In the event all bidders fail to meet the same mandatory requirement in an IFB, DPMM reserves the right, at its sole discretion, to waive that requirement for all bidders and to proceed with the evaluation. In addition, the DPMM reserves the right to waive any minor irregularity or technicality found in any individual bid.
- f. The DPMM reserves the right to reject any and all bids. When all bids are non-responsive or otherwise unacceptable and circumstances do not permit a rebid, DPMM may negotiate for the required supplies.
- g. When evaluating a bid, the State of Missouri reserves the right to consider relevant information and fact, whether gained from a bid, from a bidder, from bidder's references, or from any other source.
- h. Any information submitted with the bid, regardless of the format or placement of such information, may be considered in making decisions related to the responsiveness and merit of a bid and the award of a contract.
- i. Any award of a contract shall be made by notification from the DPMM to the successful bidder. The DPMM reserves the right to make awards by item, group of items, or on an all or none basis. The grouping of items awarded shall be determined by DPMM based upon factors such as item similarity, location, administrative efficiency, or other considerations in the best interest of the State of Missouri.
- j. All bids and associated documentation which were submitted on or before the official opening date and time will be considered open records pursuant to Section 610.021 RSMo following the official opening of bids.
- k. The DPMM posts all bid results on the On-line Bidding website for a reasonable period after bid award and maintains images of all bid file material for review. Bidders who include an email address with their bid will be notified of the award results via email.
- l. The DPMM reserves the right to request clarification of any portion of the bidder's response in order to verify the intent of the bidder. The bidder is cautioned, however, that its response may be subject to acceptance or rejection without further clarification.
- m. Any bid award protest must be received within ten (10) calendar days after the date of award in accordance with the requirements of 1 CSR 40-1.050 (10).
- n. The final determination of contract award(s) shall be made by DPMM.

## 9. CONTRACT/PURCHASE ORDER

- a. By submitting a bid, the bidder agrees to furnish any and all equipment, supplies and/or services specified in the IFB, at the prices quoted, pursuant to all requirements and specifications contained therein.
- b. A binding contract shall consist of: (1) the IFB and any amendments thereto, (2) the contractor's response (bid) to the IFB, (3) clarification of the bid, if any, and (4) DPMM's acceptance of the response (bid) by "notice of award" or by "purchase order."
- c. A notice of award does not constitute an authorization for shipment of equipment or supplies or a directive to proceed with services. Before providing equipment, supplies and/or services, the contractor must receive a properly authorized purchase order.
- d. The contract expresses the complete agreement of the parties and performance shall be governed solely by the specifications and requirements contained therein. Any change, whether by modification and/or supplementation, must be accomplished by a formal contract amendment signed and approved by and between the duly authorized representative of the contractor and the DPMM or by a modified purchase order prior to the effective date of such modification. The contractor expressly and explicitly understands and agrees that no other method and/or no other document, including correspondence, acts, and oral communications by or from any person, shall be used or construed as an amendment or modification.

## 10. INVOICING AND PAYMENT

- a. The State of Missouri does not pay state or federal taxes unless otherwise required under law or regulation.
- b. The statewide financial management system has been designed to capture certain receipt and payment information. Therefore, each invoice submitted must reference the purchase order number and must be itemized in accordance with items listed on the purchase order. Failure to comply with this requirement may delay processing of invoices for payment.
- c. The contractor shall not transfer any interest in the contract, whether by assignment or otherwise, without the prior written consent of the DPMM.
- d. Payment for all equipment, supplies, and/or services required herein shall be made in arrears unless otherwise indicated in the IFB.
- e. The State of Missouri assumes no obligation for equipment, supplies, and/or services shipped or provided in excess of the quantity ordered. Any unauthorized quantity is subject to the state's rejection and shall be returned at the contractor's expense.
- f. All invoices for equipment, supplies, and/or services purchased by the State of Missouri shall be subject to late payment charges as provided in Section 34.055 RSMo.

## 11. DELIVERY

Time is of the essence. Deliveries of equipment, supplies, and/or services must be made no later than the time stated in the contract or within a reasonable period of time, if a specific time is not stated.

## 12. INSPECTION AND ACCEPTANCE

- a. No equipment, supplies, and/or services received by an agency of the state pursuant to a contract shall be deemed accepted until the agency has had reasonable opportunity to inspect said equipment, supplies, and/or services.
- b. All equipment, supplies, and/or services which do not comply with the specifications and/or requirements or which are otherwise unacceptable or defective may be rejected. In addition, all equipment, supplies, and/or services which are discovered to be defective or which do not conform to any warranty of the contractor upon inspection (or at any later time if the defects contained were not reasonably ascertainable upon the initial inspection) may be rejected.

- c. The State of Missouri reserves the right to return any such rejected shipment at the contractor's expense for full credit or replacement and to specify a reasonable date by which replacements must be received.
- d. The State of Missouri's right to reject any unacceptable equipment, supplies, and/or services shall not exclude any other legal, equitable or contractual remedies the state may have.

### **13. WARRANTY**

- a. The contractor expressly warrants that all equipment, supplies, and/or services provided shall: (1) conform to each and every specification, drawing, sample or other description which was furnished to or adopted by the DPMM, (2) be fit and sufficient for the purpose expressed in the IFB, (3) be merchantable, (4) be of good materials and workmanship, and (5) be free from defect.
- b. Such warranty shall survive delivery and shall not be deemed waived either by reason of the state's acceptance of or payment for said equipment, supplies, and/or services.

### **14. CONFLICT OF INTEREST**

- a. Officials and employees of the state agency, its governing body, or any other public officials of the State of Missouri must comply with Sections 105.452 and 105.454 RSMo regarding conflict of interest.
- b. The contractor hereby covenants that at the time of the submission of the bid the contractor has no other contractual relationships which would create any actual or perceived conflict of interest. The contractor further agrees that during the term of the contract neither the contractor nor any of its employees shall acquire any other contractual relationships which create such a conflict.

### **15. REMEDIES AND RIGHTS**

- a. No provision in the contract shall be construed, expressly or implied, as a waiver by the State of Missouri of any existing or future right and/or remedy available by law in the event of any claim by the State of Missouri of the contractor's default or breach of contract.
- b. The contractor agrees and understands that the contract shall constitute an assignment by the contractor to the State of Missouri of all rights, title and interest in and to all causes of action that the contractor may have under the antitrust laws of the United States or the State of Missouri for which causes of action have accrued or will accrue as the result of or in relation to the particular equipment, supplies, and/or services purchased or procured by the contractor in the fulfillment of the contract with the State of Missouri.

### **16. CANCELLATION OF CONTRACT**

- a. In the event of material breach of the contractual obligations by the contractor, the DPMM may cancel the contract. At its sole discretion, the DPMM may give the contractor an opportunity to cure the breach or to explain how the breach will be cured. The actual cure must be completed within no more than 10 working days from notification, or at a minimum the contractor must provide DPMM within 10 working days from notification a written plan detailing how the contractor intends to cure the breach.
- b. If the contractor fails to cure the breach or if circumstances demand immediate action, the DPMM will issue a notice of cancellation terminating the contract immediately.
- c. If the DPMM cancels the contract for breach, the DPMM reserves the right to obtain the equipment, supplies, and/or services to be provided pursuant to the contract from other sources and upon such terms and in such manner as the DPMM deems appropriate and charge the contractor for any additional costs incurred thereby.
- d. The contractor understands and agrees that funds required to fund the contract must be appropriated by the General Assembly of the State of Missouri for each fiscal year included within the contract period. The contract shall not be binding upon the state for any period in which funds have not been appropriated, and the state shall not be liable for any costs associated with termination caused by lack of appropriations.

### **17. COMMUNICATIONS AND NOTICES**

Any notice to the contractor shall be deemed sufficient when deposited in the United States mail postage prepaid, transmitted by facsimile, transmitted by e-mail or hand-carried and presented to an authorized employee of the contractor.

### **18. BANKRUPTCY OR INSOLVENCY**

- a. Upon filing for any bankruptcy or insolvency proceeding by or against the contractor, whether voluntary or involuntary, or upon the appointment of a receiver, trustee, or assignee for the benefit of creditors, the contractor must notify the DPMM immediately.
- b. Upon learning of any such actions, the DPMM reserves the right, at its sole discretion, to either cancel the contract or affirm the contract and hold the contractor responsible for damages.

### **19. INVENTIONS, PATENTS AND COPYRIGHTS**

The contractor shall defend, protect, and hold harmless the State of Missouri, its officers, agents, and employees against all suits of law or in equity resulting from patent and copyright infringement concerning the contractor's performance or products produced under the terms of the contract.

### **20. NON-DISCRIMINATION AND AFFIRMATIVE ACTION**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall agree not to discriminate against recipients of services or employees or applicants for employment on the basis of race, color, religion, national origin, sex, age, disability, or veteran status. If the contractor or subcontractor employs at least 50 persons, they shall have and maintain an affirmative action program which shall include:

- a. A written policy statement committing the organization to affirmative action and assigning management responsibilities and procedures for evaluation and dissemination;
- b. The identification of a person designated to handle affirmative action;

- c. The establishment of non-discriminatory selection standards, objective measures to analyze recruitment, an upward mobility system, a wage and salary structure, and standards applicable to layoff, recall, discharge, demotion, and discipline;
- d. The exclusion of discrimination from all collective bargaining agreements; and
- e. Performance of an internal audit of the reporting system to monitor execution and to provide for future planning.

If discrimination by a contractor is found to exist, the DPMM shall take appropriate enforcement action which may include, but not necessarily be limited to, cancellation of the contract, suspension, or debarment by the DPMM until corrective action by the contractor is made and ensured, and referral to the Attorney General's Office, whichever enforcement action may be deemed most appropriate.

## **21. AMERICANS WITH DISABILITIES ACT**

In connection with the furnishing of equipment, supplies, and/or services under the contract, the contractor and all subcontractors shall comply with all applicable requirements and provisions of the Americans with Disabilities Act (ADA).

## **22. FILING AND PAYMENT OF TAXES**

The commissioner of administration and other agencies to which the state purchasing law applies shall not contract for goods or services with a vendor if the vendor or an affiliate of the vendor makes sales at retail of tangible personal property or for the purpose of storage, use, or consumption in this state but fails to collect and properly pay the tax as provided in chapter 144, RSMo. For the purposes of this section, "affiliate of the vendor" shall mean any person or entity that is controlled by or is under common control with the vendor, whether through stock ownership or otherwise. Therefore bidder's failure to maintain compliance with chapter 144, RSMo may eliminate their bid from consideration for award.

## **23. TITLES**

Titles of paragraphs used herein are for the purpose of facilitating reference only and shall not be construed to infer a contractual construction of language.

Revised 08/28/04